

AIRPRO DIAGNOSTICS, LLC
v.
DREW TECHNOLOGIES, INC., et al.

EXHIBIT D

TO COMPLAINT AND JURY DEMAND

End User License Agreement

December 1, 2020

AutoEnginuity, L.L.C.

This End User License Agreement (the "Agreement") is a legal agreement between AutoEnginuity, L.L.C., with an address at 1819 N Rosemont, Suite 101, Mesa, AZ 85205, United States ("AutoEnginuity", "we" or "our") and you, the purchaser of a product that includes the Software ("Customer", "you" or "your") (Each a "Party", together the "Parties").

The Agreement contains the terms and conditions governing the licensing of the Software and the performance of the Support Services.

IN ORDER TO USE THE SOFTWARE YOU MUST ACCEPT ALL OF THE TERMS OF THIS AGREEMENT. AFTER READING THE TERMS, IF YOU AGREE TO THEM, PLEASE INDICATE YOUR DECISION BY CLICKING ON "I AGREE" ON THE SERVICE REGISTRATION PAGE. IF YOU DO NOT AGREE, YOU WILL NOT BE ALLOWED TO PURCHASE A LICENSE TO USE THE SOFTWARE OR ANY PRODUCT ON WHICH THE SOFTWARE IS INSTALLED.

1. Definitions

"Documentation" means the publications provided to you with the Software (e.g., User's Manual, etc.).

"Software" means AutoEnginuity's proprietary diagnostic software in object code form, which is provided with the AutoEnginuity Giotto Scan Tool.

"Support Services" means any services concerning technical support of the Software.

"Updates" means any release, update, fix or patch of the Software that AutoEnginuity makes available to you from time to time, at no additional fee. Updates do not include any releases or future products that AutoEnginuity licenses separately.

2. Software

3.1 AutoEnginuity hereby grants to you a non-exclusive, nontransferable, perpetual license to use the Software for your own internal business operations. Each individual license for the Software provides a license for one copy of the Software that may be installed on only one computer or PC at a time and used by a single user (i.e., multiple users are not allowed to concurrently use a copy installed on a single computer); provided, however, that copies of the Software may be made solely in connection with your data back-up and recovery processes conducted in the ordinary course of business. For clarity if you have two concurrent users using the Software, then you must purchase two Software licenses. Each licensed copy of the Software may be used solely to provide diagnostic services on vehicles located under the same roof (and within 500 feet) of the computer on which the Software is installed. Any such back-up copies are for storage and recovery only and may not be used in a commercial or production environment. The Software is licensed by AutoEnginuity and not sold. you acknowledge that the Software and all related information, including any Updates, are the property of AutoEnginuity and its licensors.

3.2 you may not, nor may you permit any third party to:

(i) decompile, disassemble, reverse engineer, adapt or tamper with the Software, without the prior written consent of AutoEnginuity;

(ii) remove any product identification or proprietary rights notices from the Software;

- (iii) lend, lease, sublicense, or redistribute the Software to any third party;
- (iv) modify or create derivative works of the Software;
- (v) make statements that diagnostic services performed using Software are equivalent to the OE diagnostic system; or
- (vi) use the Software on any computer that is not under the same rooftop (and within 500 ft.) as the vehicle the Software is being connected to for diagnostics.

3.3 You may only copy the Software as set forth above and only for backup, archival or disaster recovery purposes.

4. Copyright

The Software is owned by AutoEnginuity and is protected by United States copyright laws and international treaty provisions. You may not copy the Documentation.

5. Additional Customer Obligations

5.1 You acknowledge and agree that the Software has been developed for the general purpose of the operation, repair, and maintenance of motor vehicles and has not been developed to meet your specific individual requirements or business needs. While the Software may be professionally developed and tested with the latest information from the OEMs, it is possible that the Software may not always have full coverage for a vehicle and it is possible for errors in diagnostic results. You further acknowledge and agree that you shall be fully liable for any and all decisions and actions you make as a result of using the Software and Support Services under this Agreement, and that any results from using the Software should be checked against the OEM factory information if such results are used to determine the functionality of safety equipment on a motor vehicle.

5.2 You acknowledge and agree that any information generated by the Software is based on and limited to the information collected by the Software and must not be relied on as an alternative to your own professional skill and judgement. At all times and under all circumstances, you carry out repairs, servicing or maintenance on motor vehicles entirely at your own risk.

5.3 At all times while using the Software, you agree to procure and maintain insurance policies adequate to fulfill your responsibilities and liabilities under this Agreement, and upon written request from AutoEnginuity, you agree to provide evidence of such insurance policies.

5.4 You acknowledge and agree that except as otherwise provided herein, no intellectual property rights under this Agreement are granted or transferred to you and the Software all intellectual property rights related thereto shall be treated as Confidential Information (as defined below).

6. Warranty and Disclaimer for Software

6.1 AutoEnginuity warrants that for a period of thirty (30) days from the date of delivery (the "Warranty Period"), the Software shall perform substantially in accordance with the Documentation.

6.2 The preceding warranty shall not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation; (ii) the Software, or any part, has been modified by anyone other than AutoEnginuity; or (iii) a malfunction in the Software has been caused by you, your equipment, or a third party's equipment and/or software.

6.3 Any liability of AutoEnginuity (including its licensors) for a breach of the above Software warranty during the Warranty Period shall be limited to repair or replacement of the Software, unless, in AutoEnginuity's opinion, such repair or replacement would be inadequate or impractical, then AutoEnginuity will refund the fee paid for the Software. AutoEnginuity does not warrant that the operation of the

Software will be uninterrupted or error-free.

6.4 EXCEPT AS OTHERWISE SET FORTH HEREIN, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND AUTOENGINEUITY MAKES NO FURTHER WARRANTIES OR GUARANTY OF ANY KIND. EXCEPT AS EXPRESSLY STATED IN THESE TERMS, ANY CONDITION, WARRANTY, REPRESENTATION OR OTHER TERM CONCERNING THE SOFTWARE OR ITS USE, WHICH MIGHT OTHERWISE BE IMPLIED INTO, OR INCORPORATED IN, THESE TERMS WHETHER BY STATUTE, COMMON LAW OR OTHERWISE (INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT), IS EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. THE PARTIES WAIVE ANY AND ALL APPLICATION OF AND REMEDIES UNDER ARTICLES 2 AND 2A OF THE UNIFORM COMMERCIAL CODE.

6.5 You acknowledge that: (i) the functionality of the Software may vary by vehicle, make, model, date of manufacture and by individual vehicle specification; and (ii) AutoEnginuity does not guarantee that every aspect of vehicle operation, repair and maintenance can be fully supported, or that the Software provides or will continue to provide full support or functionality across all vehicles; (iii) future modifications to the Software may materially alter the functionality of the Software; and (iv) certain Software functionality may, from time to time, cease to be available or supported.

6.6 To report a claim under this limited warranty, you will be required to contact AutoEnginuity by phone: 1-480-827-8665 (TOOL) or email: support@autoenginuity.com.

7. Maintenance

AutoEnginuity offers Support Services for the Software pursuant to the terms of this Agreement. All Support Services can be subscribed for on an annual basis and require an annual payment that is due in advance. A separate annual maintenance and support fee is required for each copy of the Software for which Support Services are purchased.

8. Limitation of Liability

8.1 NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE AUTOENGINEUITY'S LIABILITY FOR: (I) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (II) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAWS.

8.2 SUBJECT ALWAYS TO CLAUSE 8.1 ABOVE, AUTOENGINEUITY SHALL NOT BE LIABLE FOR THE FOLLOWING TYPES OF LOSS OR DAMAGES, WHETHER DIRECT OR INDIRECT: (I) LOSS OF PROFITS OR REVENUE; (II) LOSS OR DAMAGE TO BUSINESS OR REPUTATION; (III) LOSS OF ANTICIPATED SAVINGS; (IV) LOSS OF OR DAMAGE TO GOODWILL; (V) LOSS OF USE OR DESTRUCTION OF DATA OR INFORMATION; (VI) ATTORNEYS' FEES, OR (VII) ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE. FOR THE PURPOSES OF THIS CLAUSE, THE TERM "LOSS" INCLUDES PARTIAL LOSS OR DAMAGES, OR REDUCTIONS IN VALUE, AS WELL AS COMPLETE OR TOTAL LOSS OR DAMAGES.

8.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AUTOENGINEUITY'S TOTAL LIABILITY AND THAT OF ITS OFFICERS, EMPLOYEES, AGENTS, RESELLERS, DISTRIBUTORS, SUPPLIERS OR LICENSORS, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY YOU TO AUTOENGINEUITY FOR THE SOFTWARE OR SUPPORT SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM UNDER THIS AGREEMENT.

8.4 ANY LEGAL PROCEEDING BETWEEN THE PARTIES, EXCEPT A SUIT BY AUTOENGINEUITY AGAINST CUSTOMER FOR AMOUNTS OWED HEREUNDER, MUST BE COMMENCED WITHIN ONE (1) YEAR OF THE DATE THAT THE CAUSE OF ACTION FIRST ACCRUES.

9. Changes to the Software

AutoEnginuity reserves the right to change, substitute, or terminate certain

functionality of the Software (and make corresponding updates to the relevant Documentation). Where a change to the Software is reasonably likely to have a material adverse impact on your rights under the Agreement, we will use reasonable endeavors to provide you with: (i) at least thirty (30) days' advance notice with respect to a planned change, or (ii) notification as soon as possible following an unexpected change (in each case notification to be given via email or in writing using the contact details associated with your account and/or via Our website). If you use the Software after the change comes into effect, you will be deemed to have accepted such change; and we may (but shall not be obliged to) offer you alternative Software.

10. USE OF DATA

10.1 YOU ACKNOWLEDGE AND AGREE THAT AUTOENGINEUITY EXTRACTS AND COPIES TECHNICAL, AGGREGATED AND/OR ANONYMOUS DATA RELATING TO VEHICLES, THEIR PARTS AND ANY VEHICLE OR PART FAULTS VIA THE SOFTWARE (COLLECTIVELY, "DATA"). SUCH ACTIVITIES ARE UNDERTAKEN WITHOUT LIMITATION TO PROVIDE, ENHANCE OR DEVELOP THE SOFTWARE AND SUPPORT SERVICES. You acknowledge and agree that all Data may be uploaded to AutoEnginuity. You hereby grant to AutoEnginuity, and acknowledge that AutoEnginuity will have, a nonexclusive, limited, irrevocable, perpetual, royalty-free license to use the Data for AutoEnginuity's own commercial purposes, and to transfer or integrate any such Data to other service providers associated with AutoEnginuity, in each case so long as AutoEnginuity does not disclose any personally identifiable information associated with any such Data. You represent and warrant you own or have obtained all rights necessary to provide the license to the Data to AutoEnginuity, and that AutoEnginuity's use of the Data as contemplated by this Agreement will not infringe the rights of any third party or constitute the misappropriation of any third party intellectual property

10.2 WE MAY FROM TIME TO TIME COLLECT PERSONAL DATA SUPPLIED BY YOU OR YOUR EMPLOYEES AND REPRESENTATIVES IN THE COURSE OF ORDERING, REGISTERING OR USING THE SOFTWARE OR SERVICES, FOR EXAMPLE NAMES AND CONTACT DETAILS (INCLUDING CONTACT NAMES, GEOGRAPHIC ADDRESSES, EMAIL ADDRESSES AND TELEPHONE NUMBERS).

10.3 Should We suspect or become aware of any illegal or unlawful activities being carried out by you or on your behalf, We may report such activities to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing customer information and personal data, and we may also cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to assist more generally with the investigation and prosecution of illegal conduct.

11. General

11.1 The Software is subject to export control laws and regulations and you agree to comply with such laws and regulations.

11.2 You may not assign or transfer any or all of your rights or obligations under this Agreement without AutoEnginuity's prior written consent.

11.3 All notices to AutoEnginuity shall be in writing and shall be sent for the attention of the Office Administrator at the address for AutoEnginuity at the beginning of this Agreement. All notices to the Customer shall be sent to the address listed on file.

11.4 A waiver of any right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of subsequent breach or default.

11.5 The Parties do not intend that any third party shall have the right to enforce the terms of this Agreement.

11.6 In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, pandemic, acts of God, internet service provider failures or delays, denial of service attacks, or other similar causes) the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected Party (i) provides the other Party with prompt notice of the nature and expected duration of the event, (ii) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (iii) provides periodic notice of relevant developments, and (iv) provides prompt notice of the end of such event.

11.7 This Agreement, contains the entire agreement between the Parties and supersedes, cancels, and extinguishes any other agreements, understandings, promises, representations, assurances, and warranties, whether oral or written.

12. GOVERNING LAW

THIS AGREEMENT AND ALL CLAIMS RELATED TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES, WHETHER IN CONTRACT, TORT, EQUITY, STATUTORY DUTY, OR OTHERWISE, SHALL BE EXCLUSIVELY GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THIS AGREEMENT.

13. JURISDICTION, DISPUTE RESOLUTION, JURY AND CLASS ACTION WAIVER

ANY CONTROVERSY OR CLAIM RELATED TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES SHALL BE SETTLED BY MANDATORY ARBITRATION ADMINISTERED BY ONE ARBITRATOR IN ACCORDANCE WITH THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AS THEY MAY BE AMENDED FROM TIME TO TIME, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PLACE OF ARBITRATION SHALL BE MARICOPA COUNTY, STATE OF ARIZONA. THE RELEVANT ARBITRATION RULES ARE AVAILABLE AT [HTTPS://WWW.ADR.ORG](https://www.adr.org). THE ARBITRATOR WILL HAVE NO AUTHORITY TO AWARD PUNITIVE, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO LOST PROFITS), OR OTHER DAMAGES NOT MEASURED BY THE PREVAILING PARTY'S DIRECT, ACTUAL DAMAGES. THE ARBITRATOR SHALL HAVE THE EXCLUSIVE POWER TO RULE ON ANY CHALLENGE TO ITS/THEIR OWN JURISDICTION, THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF THIS AGREEMENT TO ARBITRATE, AND ANY THRESHOLD ISSUES, ALL OF WHICH ARE EXPRESSLY DELEGATED TO THE ARBITRATOR. EACH PARTY SHALL BEAR ITS OWN COSTS AND EXPENSES AND AN EQUAL SHARE OF THE ARBITRATORS' AND ADMINISTRATIVE FEES OF ARBITRATION. EXCEPT AS MAY BE REQUIRED BY LAW, NEITHER A PARTY NOR AN ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES.

IN THE EVENT ANY ASPECT OF THE ARBITRATION AGREEMENT CONTAINED HEREIN IS DEEMED UNENFORCEABLE, SUCH ASPECT SHALL BE SEVERED PURSUANT TO SECTION 14, AND THE REST OF THE ARBITRATION AGREEMENT SHALL BE ENFORCED.

IN THE EVENT THE ARBITRATION AGREEMENT CONTAINED HEREIN IS DEEMED UNENFORCEABLE AS A WHOLE, THE PARTIES IRREVOCABLY SUBMIT AND CONSENT TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED WITHIN MARICOPA COUNTY, STATE OF ARIZONA. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.

THE PARTIES AGREE TO ARBITRATE OR LITIGATE SOLELY ON AN INDIVIDUAL BASIS, AND AGREE THAT THIS AGREEMENT DOES NOT PERMIT CLASS ARBITRATION, CLASS ACTIONS, OR ANY CLAIMS

BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE PROCEEDING. NEITHER THE ARBITRAL TRIBUNAL NOR A COURT MAY CONSOLIDATE CLAIMS OR OTHERWISE PRESIDE OVER

ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

CUSTOMER FURTHER AGREES THAT THE SELECTION OF MARICOPA COUNTY, STATE OF ARIZONA AS THE JUDICIAL FORUM FOR DISPUTES NOT SUBJECT TO ARBITRATION DOES NOT CONSTITUTE A CONSENT TO GENERAL OR SPECIFIC PERSONAL JURISDICTION BY AUTOENGINEUITY IN ARIZONA OR ANY OTHER U.S. COURT. AUTOENGINEUITY FULLY RESERVES THE RIGHT TO CONTEST ANY LEGAL PROCEEDING COMMENCED IN THE U.S. ON THE BASIS OF PERSONAL JURISDICTION.

14. SEVERABILITY

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, then unless otherwise agreed between us, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remainder of the Agreement.

Copyright (c) 2002-2020 AutoEnginuity, L.L.C. All Rights Reserved.